

## LANDFILL FRANCHISE OPTIONS

A. Eliminate the local franchise for landfills that are not local or regional in nature, which would bring the franchise decision back in line with the normal use of franchise authority and then rely on the State permit review, with an increased emphasis on site selection criteria, to address siting issues for those landfill. This is the approach taken in the first draft. The local governments would still review the landfill application for consistency with local ordinances and consistency with local ordinances would be a factor in the permit decision. Basically, the local government's role would be the same as in any other major environmental permitting process. The local government could influence the siting of a landfill within its jurisdiction, but through the use of its planning, zoning and other regulatory authority. Removing the franchise authority for large landfills will not necessarily eliminate the possibility that a waste management company would negotiate host fees with the local government.

B. Retain the local franchise requirement for all landfills, but also require a State franchise for facilities over a certain size. One difficulty here is figuring out what the criteria would be for issuing a State franchise as distinct from the criteria used to make the permit decision. Another question will be whether a State franchise should be issued by the same agency that issues the permit. We have looked at criteria such as consistency with the State's Solid Waste Management Plan, but the Plan only sets very general goals with respect to waste reduction, recycling, research of new waste management technology, etc. Since a "franchise" is normally intended to authorize a company to provide a specific service within a specific service area, the concept of a State franchise for landfills suggests that the State would be moving toward something analogous to a certificate of need. (That would certainly make for another interesting test case for the Supreme Court.)

C. Retain the local franchise requirement for all landfills, but move the franchise decision to a point later in the permit process -- maybe after the site suitability determination -- to avoid the current situation where local approval of a franchise suggests that the siting decision has already been made. As the bill is currently drafted, that would require the waste management company to prepare an EIS and get through the site suitability review by Division of Waste Management without knowing whether the local government will issue a franchise or not.

D. Retain the local franchise requirement in its current form, but prohibit payments from a waste management company to a local government in excess of any actual costs that will be incurred by the local government as a result of siting the facility within its jurisdiction (and normal taxes, fees, etc.) The money that flows from the waste industry to local government has become a major factor in local government decisions to issue a franchise and also creates political pressure to approve the site for reasons that have

nothing to do with the appropriateness of the location. Eliminating the franchise authority (as in A) may or may not end the payment of host fees entirely, although it may remove one major incentive for those payments.